

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity
as President of the United States, et al.,

Defendants.

Civil Action No. 1:25-cv-11221-WGY

DECLARATION OF SAMUEL D. RAUCH, III

1. I, Samuel D. Rauch, III, am the Deputy Assistant Administrator for Regulatory Programs for the National Marine Fisheries Service (“NMFS”), an agency of the National Oceanic and Atmospheric Administration (“NOAA”) within the U.S. Department of Commerce (“DOC”). I have held this position since 2006. In this capacity, I oversee NMFS’s regulatory actions and programs, under the direction and supervision of the Assistant Administrator for Fisheries, including the work of the NMFS’s Office of Protected Resources, which administers the Endangered Species Act (“ESA”) (16 U.S.C. § 1531 et seq.) and the Marine Mammal Protection Act (“MMPA”) (16 U.S.C. § 1361 et seq.) for those species under our jurisdiction. This includes NMFS consultations under ESA Section 7 and the issuance of Incidental Take Authorizations under MMPA Section 101(a)(5). The Office of Protected Resources administers the ESA collaboratively with NMFS’s five regional offices, including the Greater Atlantic Regional Field Office (“GARFO”) in Gloucester, Massachusetts. ESA consultations for offshore wind projects are handled primarily by GARFO. I also oversee NMFS consultations conducted under

Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (“MSA”) (16 U.S.C. § 1801 et seq.). This declaration is based, in part, on my personal knowledge, and in part on knowledge and information from subordinates provided to me in my official capacity.

2. I am familiar with President Trump’s Presidential Memorandum, *Temporary Withdrawal of All Areas on the Outer Continental Shelf from Offshore Wind Leasing and Review of the Federal Government’s Leasing and Permitting Practices for Wind Projects* (January 20, 2025) (“Wind Memo”).
3. I also am aware of the lawsuit and motion for preliminary injunction filed by the State of New York and other plaintiffs challenging the alleged implementation of the Wind Memo. I understand that the motion asserts that NMFS has certain legal duties to act under the ESA, MMPA, and MSA. I am submitting this declaration in support of the Federal Defendants’ Response to that motion.
4. As described in more detail below, since January 20, 2025, for offshore wind projects, NMFS has not issued any formal policy statement or guidance not to take final action to issue or renew incidental take authorizations pursuant to Sections 101(a)(5)(A), (D) of the MMPA (16 U.S.C. §§ 1371(a)(5)(A), (D)); Biological Opinions and associated incidental take statements pursuant to Section 7 of the ESA (16 U.S.C. § 1536); incidental take permits pursuant to Section 10 of the ESA (16 U.S.C. § 1539); or Essential Fish Habitat (“EFH”) Conservation Recommendations pursuant to Section 305(b) of the MSA (16 U.S.C. § 1855(b)).
5. NMFS continues to review and process applications for requested incidental take authorizations pursuant to Sections 101(a)(5)(A), (D) of the MMPA (16 U.S.C. § 1371(a)(5)(A), (D)); conduct ongoing consultations pursuant to Section 7 of the ESA (16 U.S.C. § 1536); and provide technical assistance as requested to assist BOEM with ESA and MSA (16 U.S.C. § 1855(b)) compliance.
6. With regard to projects and activities by SouthCoast Wind Energy LLC (SouthCoast Wind), prior to the Wind Memo, NMFS had received a request for an incidental take authorization pursuant to Section 101(a)(5)(A) of the MMPA (16 U.S.C. § 1371(a)(5)(A)) and, in response, proposed

regulations to authorize take of marine mammals incidental to SouthCoast Wind's specified activities (*see* 89 FR 53708 (June 27, 2024)). Since January 20, 2025, NMFS has continued to communicate with Southcoast and process their application for an incidental take authorization. NMFS also has completed consultation pursuant to Section 7 of the ESA (16 U.S.C. § 1536) and Section 305(b) of the MSA (16 U.S.C. § 1855(b)). Due to new information in the Biological Opinion, which was issued on November 7, 2024, as well as the Wind Memo, NMFS informed SouthCoast Wind on January 21, 2025, that the FAST-41 milestone for the MMPA Final Incidental Take Authorization was being extended from February 25, 2025 to May 27, 2025. On May 21, 2025, NMFS informed SouthCoast Wind that the FAST-41 milestone for the MMPA Final Incidental Take Authorization was extended to September 29, 2025.

7. With regard to projects and activities by Atlantic Shores Offshore Wind, LLC (Atlantic Shores South (89 FR 77972 (Sept. 24, 2024))); Avangrid Renewables, LLC (New England Wind (89 FR 52222 (June 21, 2024))); Empire Offshore Wind LLC (Empire Wind (89 FR 11342 (Feb. 14, 2024))); Revolution Wind, LLC (Revolution Wind (88 FR 72562 (Oct. 20, 2023))); South Fork Wind LLC (South Fork Wind (87 FR 806 (Jan. 6, 2022))); US Wind, Inc. (Maryland Wind (89 FR 84674 (Oct. 23, 2024))); and Vineyard Wind 1 LLC (Vineyard Wind (86 FR 33810 (June 25, 2021))); 89 FR 75654 (Sept. 16, 2024))), NMFS has promulgated incidental take regulations and issued associated Letters of Authorization or incidental harassment authorizations pursuant to Sections 101(a)(5)(A), (D) of the MMPA (16 U.S.C. § 1371(a)(5)(A), (D)), as applicable, and has completed the consultation processes pursuant to Section 7 of the ESA (16 U.S.C. § 1536) and Section 305(b) of the MSA (16 U.S.C. § 1855(b)). Those authorizations remain operative and valid.
8. In accordance with Section 2(a) of the Wind Memo, NMFS has identified staff to consult with the Department of the Interior on the comprehensive assessment and review of Federal wind leasing and permitting practices, and NMFS staff have engaged in preliminary coordination to prepare to support the assessment.

9. This declaration is made pursuant to 28 U.S.C. § 1746. I declare under the penalty of perjury that the foregoing is true and correct to the best of my current knowledge.

Executed in Silver Spring, MD, on this 29th day of May, 2025.

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Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs

National Marine Fisheries Service

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